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DRAFT REPORT

on the proposal for a Council decision concerning access for consultation of the Visa Information System (VIS) by the authorities of Member States responsible for internal security and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences

(COM(2005)0600 – C6-0053/2006 – 2005/0232(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sarah Ludford

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision concerning access for consultation of the Visa Information System (VIS) by the authorities of Member States responsible for internal security and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences
(COM(2005)0600 – C6-0053/2006 – 2005/0232(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2005)0600)¹,
 - having regard to Articles 30(1)(b) and 34(2)(c) of the EU Treaty,
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0053/2006),
 - having regard to the Protocol integrating the Schengen acquis into the framework of the European Union, pursuant to which the Council consulted Parliament,
 - having regard to Rules 93 and 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2006),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls on the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 1

(1) Council Decision 2004/512/EC of 8

(1) Council Decision 2004/512/EC of 8

¹ Not yet published in OJ.

June 2004 establishing the Visa Information System (VIS) established the VIS as a system for the exchange of visa data between Member States. The establishment of the VIS represents one of the key initiatives within the politics of the European Union in the area of Justice, Freedom and Security. **One of the objectives of the VIS is to contribute towards** improving the administration of the common visa policy and towards internal security and to combating terrorism.

June 2004 establishing the Visa Information System (VIS) established the VIS as a system for the exchange of visa data between Member States. The establishment of the VIS represents one of the key initiatives within the politics of the European Union in the area of Justice, Freedom and Security. **The VIS should have the purpose of** improving the administration of the common visa policy, and **should also contribute** towards internal security and to combating terrorism.

Justification

It should be made clear that the main purpose of the VIS is the improvement of the common visa policy. Access by internal security authorities and by Europol should be an exception.

Amendment 2 Article 3, paragraph 2

2. Amendments to the Annex shall be made in accordance with the procedure set out in Article 11.

The Commission shall publish the amendments in the Official Journal of the European Union.

2. Member States shall communicate to the Commission any amendments to the Annex immediately.

The Commission shall publish the amendments in the Official Journal of the European Union **and shall maintain a constantly updated electronic version of the list on its website.**

Once every two years, the Commission shall publish an updated consolidated list in the Official Journal of the European Union.

Justification

Amendments to the Annex should not be decided by comitology but should be simply notified by Member States to the Commission, as in the VIS Regulation. Moreover, the legality of a comitology procedure in a third pillar measure is questionable; see justification for amendments to Article 11.

Publication of the amendments only does not fully fulfil the demands of clarity and transparency, and publication of consolidated updated versions on a regular basis is an important tool for supervision and control.

Amendment 3
Article 4, paragraph 2

2. Amendments to the Annex **shall be made in accordance with the procedure set out in Article 11.**

The Commission shall publish such amendments in the Official Journal of the European Union.

2. **Member States shall communicate to the Commission any amendments to the Annex immediately.**

The Commission shall publish such amendments in the Official Journal of the European Union **and shall maintain a constantly updated electronic version of the list on its website.**

Once every two years, the Commission shall publish an updated consolidated list in the Official Journal of the European Union.

Justification

See justification for amendments to Article 3, paragraph 2.

Amendment 4
Article 5, paragraph 1, introductory part

1. Access to the VIS for consultation by authorities responsible for internal security shall take place within the scope of their powers and if the following conditions are satisfied:

1. Access to the VIS for consultation by authorities responsible for internal security shall take place within the scope of their powers and if **all of** the following conditions are satisfied:

Justification

To avoid any misunderstandings, it is very important to state explicitly that access by authorities responsible for internal security and by Europol will be allowed only if all four conditions are satisfied i.e. those conditions are cumulative rather than alternative.

Amendment 5
Article 5, paragraph 1, point (d)

(d) if there are reasonable grounds, based on factual indications, to consider that consultation of VIS data will contribute to the prevention, detection or investigation of any of the criminal offences in question;

(d) if there are reasonable grounds, based on factual indications, to consider that consultation of VIS data will **substantially** contribute to the prevention, detection or investigation of any of the criminal offences in question;

Justification

The rapporteur agrees with the EDPS that access to VIS data in derogation of the purpose limitation principle can only be justified if the consultation will make a substantial contribution to the prevention, detection and investigation of the serious crime in question (page 4 of the EDPS opinion on the VIS third pillar proposal, 20 January 2006).

Amendment 6 Article 5, paragraph 2 a (new)

2a. The search referred to in paragraph 2 shall be on the basis of a combination of at least two data fields unless there is an overriding reason why only one can be used.

Justification

Given the specific tasks of the internal security authorities, there is a justification for more flexibility in choice of search 'keys' for making an inquiry into the system than for border etc authorities with access under the VIS Regulation. However, risks of 'profiling' through use of data like purpose of travel or errors such as false matches of photos (see also EDPS opinion, page 4) could be reduced by a targeted search based on a combination of at least two data fields.

Amendment 7 Article 5, paragraph 2 b (new)

2b. Account shall be taken of the quality and reliability of search data.

Justification

For an efficient interrogation of the system and in order to avoid wrong identifications with serious consequences for the person concerned, due account must be taken of the quality and reliability of the search data. This also allows for technological improvements with eg facial recognition technology.

Amendment 8 Article 6, paragraph 1, introductory part

1. Access to the VIS for consultation by authorities responsible for internal security of a Member State to which the VIS Regulation does not apply shall take place within the scope of their powers and

1. Access to the VIS for consultation by authorities responsible for internal security of a Member State to which the VIS Regulation does not apply shall take place within the scope of their powers, **fully**

respecting the provisions of this Decision
and

Justification

It should be made explicit that access by authorities responsible for internal security of member States to which the VIS Regulation does not apply shall fully respect the provisions of this Decision.

Amendment 9
Article 8, paragraph 1

1. The Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (2005/XX/JI) shall apply to the processing of personal data pursuant to this Decision. ***The processing of personal data shall be supervised by the independent national Data Protection Supervisory authority or authorities as provided for in Article 30 of that Council Framework Decision.***

1. The Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (2005/XX/JI) shall apply to the processing of personal data pursuant to this Decision. ***The authority or authorities designated in each Member State and endowed with the powers referred to in Article 30 of that Council Framework Decision shall monitor independently the lawfulness of the processing of VIS personal data in accordance with this Decision.***

Justification

The amendments to Article 8 are consistent with amendments from Mr Coelho that the rapporteur will accept to her VIS first pillar report. They are brought in here too in order to ensure that the supervision arrangements for the third pillar measure coincide with those for the first pillar system. This is important as it concerns the same system, only the authorities with access are different.

This amendment to Article 8, paragraph 1 is an adaptation of Coelho amendment 285 to the VIS first pillar draft report.

Amendment 10
Article 8, paragraph 1 a (new)

1a. The authority or authorities referred to in paragraph 1 shall ensure that, at least every four years, an audit of the data processing operations in the national part of the VIS is carried out according to international auditing standards.

Justification

See justification for amendment to Article 8, paragraph 1. This amendment corresponds to Coelho amendment 286 to the VIS first pillar draft report.

Amendment 11
Article 8, paragraph 1 b (new)

1b. Member States shall ensure that the authority or authorities referred to in paragraph 1 have sufficient resources to fulfil the tasks entrusted to them under this Decision.

Justification

See justification for amendment to Article 8, paragraph 1. This amendment corresponds to Coelho amendment 287 to the VIS first pillar draft report.

Amendment 12
Article 8, paragraph 3

3. The processing of personal data by the European Commission pursuant to this Decision shall be in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ***and be supervised by the European Data Protection Supervisor as provided for in Article 41 of that Regulation.***

3. The processing of personal data by the European Commission pursuant to this Decision shall be in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

The European Data Protection Supervisor shall monitor whether the Commission's processing of personal data is in conformity with this Decision. The duties and powers referred to in Article 46 and 47 of Regulation (EC) No 45/2001 shall apply accordingly.

Justification

See justification for amendment to Article 8, paragraph 1. This amendment is an adaptation of Coelho amendment 290 to the VIS first pillar draft report.

Amendment 13
Article 8, paragraph 3 a (new)

3a. The European Data Protection Supervisor shall ensure that, at least every four years, an audit of the Commission's data processing activities is carried out according to international auditing standards. The report of the audit shall be sent to the European Parliament, the Council, the Commission and the national supervisory authorities referred to in paragraph 1. The Commission shall be given an opportunity to make comments before the report is adopted.

Justification

See justification for amendment to Article 8, paragraph 1. This amendment is an adaptation of Coelho amendment 291 to the VIS first pillar draft report.

Amendment 14
Article 8, paragraph 3 b (new)

3b. The national supervisory authorities referred to in paragraph 1, the Europol joint supervisory body referred to in paragraph 2 and the European Data Protection Supervisor shall cooperate actively with each other and bear joint responsibility for the supervision of the VIS.

(a) They shall exchange relevant information, conduct joint investigations, including joint audits and inspections, examine difficulties of interpretation or application of this Decision, study problems with the exercise of independent supervision or in the exercise of the rights of the data subject, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as may be needed.

(b) The European Data Protection Supervisor, the national supervisory authorities and the Europol joint supervisory body shall meet for that

purpose at least twice a year. The costs of these meetings shall be borne by the European Data Protection Supervisor. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly according to need. A joint report of activities shall be sent to the European Parliament, the Council and the Commission every two years.

Justification

See justification for amendment to Article 8, paragraph 1. This amendment is an adaptation of Coelho amendment 294 to the VIS first pillar draft report.

Amendment 15
Article 10, paragraph 1

1. Each Member State, Europol, and the Commission as the responsible body for establishing and operating the Central Visa Information System shall keep records of all data processing operations resulting from access to the VIS for consultation pursuant to this Decision. Those records shall show the exact purpose of the access for consultation, the date and time of access, the data used for consultation and the type of data consulted, and the name of the authority accessing and consulting the data. In addition, each Member State and Europol shall keep records of the persons ***responsible for consulting*** the data.

1. Each Member State, Europol, and the Commission as the responsible body for establishing and operating the Central Visa Information System shall keep records of all data processing operations resulting from access to the VIS for consultation pursuant to this Decision. Those records shall show the exact purpose ***in accordance with Article 5(1)(b), (c) and (d)*** of the access for consultation, the date and time of access, the data used for consultation and the type of data consulted, and the name of the authority accessing and consulting the data. In addition, each Member State and Europol shall keep records of the persons ***duly authorised to consult*** the data.

Justification

In order to ensure that a test of necessity is applied for all consultations of the VIS and reduce the risk of routine access, it is important to state explicitly that the exact purpose should refer to the elements making consultation of the VIS necessary i.e in Article 5 b, c and d (see also EDPS opinion, page 4)

Use of the expression 'duly authorised' staff as in other parts of the Decision avoids confusion. What is of interest is the record of the person actually consulting data, whereas 'the person responsible for' could refer to a superior officer..

Amendment 16
Article 10, paragraph 2

2. Such records ***containing personal data*** may be used only for the data protection monitoring of the legality of data processing as well as to ensure data security. ***Only such records containing data of a non-personal nature may be used*** for the monitoring and evaluation referred to in Article 12.

2. Such records may be used only for the data protection monitoring of the legality of data processing as well as to ensure data security, ***to carry out self-auditing in accordance with Article 10a and*** for the monitoring and evaluation referred to in Article 12.

Justification

As in the case of the VIS first pillar, these records should be used not only for monitoring data protection and ensuring data security but also for efficient and regular self-auditing of VIS access. There is no reason to distinguish between records containing personal data and those containing data of a non-personal nature. This distinction does not exist in the first pillar proposal, and for carrying out the monitoring the Commission would need to use all records.

Amendment 17
Article 10 a (new)

Article 10a

Self-auditing

Each national authority as referred to in Article 4 (1) and Europol specialised unit as referred to in Article 7 (3) designated as central access points to access the VIS, shall have an internal monitoring service responsible for ensuring compliance with this Decision and reporting directly to its senior management. They shall each send a regular report to their respective supervisory authority and shall cooperate with them.

Justification

As in the case of the VIS first pillar, the self-auditing (a concept familiar in financial control) is very important because it will contribute to the effective execution of the tasks of the supervisory authorities. They will be able to identify problems and focus on them during their own auditing procedure..

Amendment 18

Article 11

deleted

Advisory Committee

1. Where reference is made to this Article, the Commission shall be assisted by a advisory Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The Committee shall adopt its rules of procedure on a proposal made by the Chair on the basis of standard rules of procedure which have been published in the Official Journal of the European Union. Each Member State shall designate one representative.

3. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, if necessary by taking a vote, within a time-limit to be laid down by the Chair according to the urgency of the matter. The Chair shall not vote.

4. The opinion shall be recorded in the minutes. Each Member State shall have the right to ask to have its position recorded in the minutes.

5. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which the opinion has been taken into account.

Justification

The legality of the delegation of implementing powers by the Council to the Commission for Third Pillar measures is questionable:

a) unlike the EC Treaty which has a legal basis for 'comitology' (Art 202(3)), the EU Treaty does not contain any legal provision allowing the Council to delegate implementing powers to the Commission. Indeed article 34 (2)(c) states that 'the Council, acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union'

b) using the "comitology" procedure would deprive the Parliament of its right to be consulted as laid down in Article 39(1) of the EU Treaty: "The Council shall consult the European Parliament before adopting any measure referred to in Article 34(2)(b), (c) and (d)'.

By letter of 02.02.2006, the LIBE Committee requested an opinion from the Parliament Legal Service on these issues and is currently awaiting a reply.

Amendment 19
Article 12, paragraph 1

1. The Commission shall ensure that systems are in place to monitor the functioning of the VIS pursuant to this Decision against objectives, in terms of outputs, cost-effectiveness and quality of service.

1. The Commission shall ensure that systems are in place to monitor **the lawfulness of processing and** the functioning of the VIS pursuant to this Decision against objectives, in terms of outputs, cost-effectiveness and quality of service.

Justification

As pointed out by the EDPS (p. 6 of his Opinion) monitoring should cover not only the aspects of output, cost-effectiveness and quality of services, but also compliance with legal requirements, especially in the field of data protection. The scope of Article 12 is therefore extended to cover this aspect.

Amendment 20
Article 12, paragraph 2

2. Two years after the VIS starts operations and every two years hereafter, the Commission shall submit a report to the European Parliament and to the Council on the technical functioning of the VIS pursuant to this Decision. That report shall include information on the performance of the VIS against quantitative indicators predefined by the Commission.

2. Two years after the VIS starts operations and every two years hereafter, the Commission shall submit a report to the European Parliament and to the Council on **lawfulness of processing and** the technical functioning of the VIS pursuant to this Decision. That report shall include **an evaluation of the records referred to in Article 10 and** information on the performance of the VIS against quantitative indicators predefined by the Commission. **It shall be examined by the European Parliament and the Council. Member States shall answer any questions raised by the institutions in that context.**

Justification

See justification for amendment to Article 12, paragraph 1.

Amendment 21
Article 12, paragraph 3

3. Four years after the VIS starts operating and every four years thereafter, the Commission shall produce an overall evaluation of the VIS pursuant to this Decision. This evaluation shall include an examination of the results achieved against objectives and an assessment of the continuing validity of the underlying rationale behind this Decision and any implications for future operations. The Commission shall submit the evaluation reports to the European Parliament and the Council.

3. Four years after the VIS starts operating and every four years thereafter, the Commission shall produce an overall evaluation of the VIS pursuant to this Decision. This evaluation shall include an examination of the results achieved against objectives, ***the lawfulness of processing*** and an assessment of the continuing validity of the underlying rationale behind this Decision and any implications for future operations. The Commission shall submit the evaluation reports to the European Parliament and the Council. ***They shall be examined by the European Parliament and the Council. Member States and Europol shall answer any questions raised by the institutions in that context.***

Justification

See justification for amendment to Article 12, paragraph 1.

EXPLANATORY STATEMENT

I. Introduction

With a view to achieving a higher level of EU internal security, the Commission adopted on 24.11.2005, at the request of the Council¹, the present third pillar proposal which will allow Member States' authorities responsible for internal security and Europol access to the VIS database.

These authorities are defined as authorities responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences, which must mean intelligence services as well as police.

VIS is a Community (first pillar) information system developed with the primary purpose of improving the common visa policy by ensuring an efficient exchange of visa data between Member States. Orientations on the basic structure and content of the VIS were initially given by the Council Conclusions of 19.2.2004², followed by a Council decision in June 2004³ which legally established the VIS with EU budget finance, defined its architecture and gave the Commission the mandate to develop the system at technical level. The Parliament is currently examining the Commission proposal for a regulation defining the main rules for VIS under the co-decision procedure⁴. The rapporteur refers here to the report she presented in the LIBE Committee on 24.11.2005.

II. Access by internal security authorities to large scale Community information databases

This proposal must be seen in a wider context. Firstly, there are plans to give access to internal security authorities not only to the VIS but also to other databases such as Eurodac. The 'need' for such an access has been underlined by the Council back in 2002⁵, and more recently in the Commission's communication on interoperability⁶. The communication stated that access to these systems will bring a substantial contribution to the fight against terrorism and serious crimes by filling the current 'serious gap in the identification of suspected perpetrators of a serious crime'.

Secondly, enhanced interoperability and synergies among these databases is envisaged, the recent Commission's communication on interoperability offering indeed a wide set of scenarios for the future of JHA databases. The Parliament now has the opportunity to take part in the development of the future IT architecture in European JHA matters and has to seize it, by thoroughly examining the different scenarios proposed in the Communication⁷.

¹ See Council conclusions of 7.3.2005 (doc. 6811/05)

² See Council doc. 5831/04

³ Council Decision 2004/512/EC

⁴ COM(2004)0835

⁵ See Council doc. 5968/02, p.2 and 8784/02, p.5(e)

⁶ COM(2005)597, in particular 4.6 and 5.2.3

⁷ Briefing paper by Peter Hobbing (IP/C/LIBE/FWC/2005-8)

Thirdly, one should bear in mind that internal security authorities will access 'non-criminal' (Community) databases, which have been built for a specific purpose, and therefore, particular attention must be paid to the risks involved for human rights, and in particular the privacy rights of citizens.

Giving the sensitive nature of the matter and because the pattern in VIS will be certainly repeated in SIS II and Eurodac, it is essential that this proposal provides for clear principles and adequate data protection safeguards. In particular, it has to be clearly stated from the beginning that access by internal security agencies to Community databases must respect the purpose limitation principle and therefore access can be given only in exceptional circumstances and has to be accompanied by specific safeguards¹.

III. Merits of the Commission proposal

The rapporteur considers that the Commission proposal responds in a generally satisfactory way to these important requirements. In particular, she welcomes the following positive elements:

- respect for the purpose limitation principle through explicit prohibition of routine access to the VIS by authorities responsible for internal security, given that the main purpose of the VIS is facilitation of the visa policy. Art. 5 of the proposal, Recital 5 and the explanatory memorandum all clearly state that access will be provided only on a case by case basis;
- respect for the proportionality principle in that access may be requested only in relation to the prevention, detection and investigation of terrorist crimes as referred to in the Council Framework Decision 2002/475 on combating terrorism and other serious criminal offences under the Europol Convention;
- effective control of the system in that there is no direct access to the VIS by internal security authorities, but only through single national access points and a specialised unit for Europol, and there is a requirement for publication of these central access points as well as of the list of internal security authorities which may request access;
- a high level of data protection since application of this Decision is made conditional on the prior entry into force of the data protection Framework Decision for third pillar matters. In addition, the onward transfer of data is prohibited. Even though that Framework Decision is apparently not generally applicable to intelligence services (an issue which will no doubt be taken up in the examination of that proposal), the Commission has in Art 8(1) of the present decision proposed that it should apply to the processing of VIS data by internal security agencies. The rapporteur strongly welcomes this.

The rapporteur appreciates that all these are essential conditions that must figure in the final Council Decision and therefore proposed their inclusion in the bridging clause that will link the first pillar proposal with the present proposal. Only if the above mentioned elements are met can access by third pillar authorities to the VIS be considered justified and proportionate.

¹ See EDPS opinion on the proposal, 20.1.2006, p. 2-3.

IV. Possible improvements

Several amendments have been tabled in areas where the rapporteur believes further clarifications or improvements are needed:

Because VIS is one single system and only the authorities having access to it will be different, there are areas where third pillar provisions have to be consistent with first pillar provisions. This is the case in particular of provisions dealing with supervision and control, and several amendments are tabled (in particular to Art. 8, 10 and 12) to reflect this situation.

Clear drafting is very important in order to avoid misunderstandings and ensure respect for rules. This is particularly important as regards the purpose of access. It should be clearly stated that the conditions for access to VIS laid down in Art. 5(1) are cumulative (rather than alternative) and that the records from Art. 10 have to show the exact purpose which made the VIS consultation necessary in accordance with these conditions. In addition, Art. 5 has been amended to require that consultation of the VIS should '*substantially*' contribute to the prevention, detection or investigation of a serious crime, so as to avoid routine access.¹

As regards the search keys, the rapporteur recognizes that given the specific tasks of the internal security authorities, they need wide flexibility in choosing the right search key for making an inquiry in the system. Therefore the rapporteur's stricter approach to limiting the search keys for 'first pillar authorities' is not appropriate. There may even be occasions when it is valid to use only a photograph to search, despite its unreliability for identification in a large database. The rapporteur is mindful of the shooting by London police officers on July 22nd 2005 of the entirely innocent Jean-Charles de Menezes, on suspicion that he was a suicide bomber. Perhaps mistaken identity could have been avoided with a database search based on his photograph.

However, the rapporteur proposes that the search should be made on the basis of a combination of at least two data fields unless there is an overriding reason why only one can be used. This will ensure a targeted and efficient search and will diminish the risks of 'profiling' or fishing expeditions. At the same time, in order to avoid wrong identifications with serious consequences for the person concerned, due account must be taken of the quality and reliability of the search data when using it.

Finally, the rapporteur raises the comitology issue. The lawfulness of the delegation of implementing powers by the Council to the Commission for third pillar measures is questionable. The rapporteur proposes therefore the deletion of the comitology provisions and the updating of the annex by means of a notification procedure (see the amendment to Art. 11 for a detailed justification).

V. Conclusion

Access by internal security authorities to the VIS database can be necessary and the rapporteur considers that it is preferable to regulate their access in an EU legal instrument

¹ See also the EDPS opinion on the proposal, 20.1.2006, p. 4.

instead of leaving it entirely open to national law and practice.

The rapporteur reiterates however that VIS is an information system developed in application of European visa policy and not as a law enforcement tool. Therefore access by internal security authorities to VIS should remain an exception and should be accompanied by strict safeguards. This is the approach the Commission has followed in the present proposal, which the rapporteur welcomes.

The Council must not lower the strict safeguards the Commission has established in the present proposal and has to take on board the Parliament's recommendations. At the same time, it is vital that the Council treats the first and the third pillar proposals in close relation, since they concern the same system.

One should also not ignore the need for the Parliament to have a coherent approach for all proposals dealing with JHA databases, such as SIS II. Parliament must carefully analyse the Commission's communication on interoperability and determine its preferences for synergies between current and future JHA databases.

Finally the rapporteur would like to emphasise again that in the absence of the adoption of the Constitutional Treaty, the democratic deficit in the third pillar needs to be overcome by activating the 'passerelle' procedure provided for by Art. 42 of the EU Treaty, allowing these issues to be 'communautarised' by passing them into the first pillar.

The rapporteur supports the present proposal on the basis of these comments and with the amendments suggested.